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**REDACTED - FOR PUBLIC INSPECTION**

July 12, 2010

**VIA COURIER**

**FILED/ACCEPTED**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

JUL 12 2010

Federal Communications Commission  
Office of the Secretary

**Re: *In the Matter of Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink Application for Transfer of Control Under § 214 of the Communications Act, as Amended, WC Dkt. No. 10-110***

Dear Ms. Dortch:

Please find enclosed for filing two copies of the redacted version of the Comments of Cbeyond, Inc., Integra Telecom, Inc., Socket Telecom, LLC, and tw telecom inc. Pursuant to the May 28, 2010 *Public Notice* in this proceeding,<sup>1</sup> electronic copies of the redacted version of the filing will be sent to Alex Johns of the Competition Policy Division of the Wireline Competition Bureau; Jeff Tobias of the Mobility Division of the Wireline Competition Bureau; David Krech of the Policy Division of the International Bureau; Jim Bird of the Office of General Counsel; and Best Copy and Printing, Inc. The redacted version of the filing will also be filed via ECFS.

Pursuant to the *Protective Order* in the above-referenced proceeding,<sup>2</sup> one original of the confidential version of this filing is being filed with the Secretary's Office under separate cover today. Also, pursuant to the *Protective Order*, two copies of the confidential version will be provided to Gary Remondino of the Wireline Competition Bureau.

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<sup>1</sup> See *Application Filed by Qwest Communications International, Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to Transfer of Control*, Public Notice, WC Dkt. No. 10-110, DA 10-993, at 6 (rel. May 28, 2010) ("*Public Notice*").

<sup>2</sup> See *In re Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink Application for Transfer of Control Under § 214 of the Communications Act, as Amended*, Protective Order, WC Dkt. No. 10-110, DA 10-994 (WCB, rel. May 28, 2010) ("*Protective Order*").

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Please do not hesitate to contact me if you have any questions or concerns about this submission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nirali Patel". The signature is fluid and cursive, with the first name "Nirali" being more prominent than the last name "Patel".

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*Attorneys for Cbeyond, Inc., Integra Telecom, Inc.,  
Socket Telecom, LLC, and tw telecom, inc.*

Enclosures

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications Filed by Qwest Communications	)	WC Dkt. No. 10-110
International Inc. and CenturyTel, Inc., d/b/a/	)	
CenturyLink for Consent to Transfer of Control	)	

**COMMENTS OF  
CBEYOND, INTEGRA TELECOM, SOCKET TELECOM, AND TW TELECOM**

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July 12, 2010

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**Before the  
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In the Matter of	)	
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Applications Filed by Qwest Communications	)	WC Dkt. No. 10-110
International Inc. and CenturyTel, Inc., d/b/a/	)	
CenturyLink for Consent to Transfer of Control	)	

**COMMENTS OF  
CBEYOND, INTEGRA TELECOM, SOCKET TELECOM, AND TW TELECOM**

Pursuant to the Commission's May 28, 2010 Public Notice,<sup>1</sup> Cbeyond, Inc. ("Cbeyond"), Integra Telecom, Inc. ("Integra"), Socket Telecom, LLC ("Socket Telecom"), and tw telecom inc. ("tw telecom") (collectively, the "Joint Commenters"), through their undersigned counsel, hereby submit these Comments regarding the Application filed by Qwest Communications International Inc. ("Qwest") and CenturyTel, Inc. d/b/a CenturyLink ("CenturyLink") (collectively, the "Applicants") in the above-captioned proceeding.<sup>2</sup>

**I. INTRODUCTION.**

The Commission has described the standard of review for determining whether a proposed transfer of control will serve the public interest pursuant to Sections 214(a) and 310(d) of the Act<sup>3</sup> as follows:

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<sup>1</sup> See *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to Transfer of Control, Pleading Cycle Established*, Public Notice, DA 10-993, WC Dkt. No. 10-110 (rel. May 28, 2010) ("Public Notice").

<sup>2</sup> See Qwest Communications International Inc., Transferor, and CenturyTel, Inc. d/b/a CenturyLink, Transferee, Application for Transfer of Control Under Section 214 of the Communications Act, as Amended (filed May 10, 2010) ("Application").

<sup>3</sup> 47 U.S.C. §§ 214(a), 310(d).

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[T]he Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test, weighing any potential public interest harms of the proposed transaction against the potential public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.<sup>4</sup>

Thus, the Commission's public interest inquiry must include an assessment of whether the proposed transaction will result in the Merged Company's failure to comply with the provisions of the Act needed to sustain and promote local competition. Moreover, the Commission cannot approve the proposed transaction unless the Applicants demonstrate that the benefits yielded by the transfer outweigh the harms.

Given the nature of the proposed transaction, it will be extremely difficult to meet this standard. The Commission has not previously reviewed the proposed acquisition of an entire Bell Operating Company ("BOC") by a non-BOC incumbent LEC.<sup>5</sup> Because of its status as a non-BOC, CenturyLink has never been required to meet the requirements of Sections 271 and

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<sup>4</sup> *In re Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, 25 FCC Rcd. 5972, ¶ 9 (2010) ("Frontier-Verizon Merger Order"); see also *In re Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd. 8741, ¶ 9 (2009) ("CenturyTel-Embarq Merger Order").

<sup>5</sup> When the Commission approved the Qwest-US West merger on March 10, 2000, US West had not received authority to provide interLATA services pursuant to Section 271 of the Act in any state in its territory. In approving that merger, the Commission found that, to comply with Section 271, the "Applicants must completely divest Qwest's interLATA business originating in the US WEST region prior to closing the merger." *In re Qwest Communications International Inc. and U S WEST, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd. 53276, ¶ 3 (2000). See also *id.* ¶¶ 25-27. Later, as discussed further below, the merged company's systems and processes underwent extensive scrutiny in state and federal proceedings before it was granted 271 authority.

272 of the Act<sup>6</sup> and has largely avoided close regulatory scrutiny of its wholesale offerings. In fact, CenturyLink has very limited experience, expertise or apparent interest in providing wholesale services to competitors in its territory. There is a significant risk that CenturyLink will simply be unable to live up to the obligations of a BOC to meet the “competitive checklist” of Section 271<sup>7</sup> and the nondiscrimination requirements of Section 272(e).<sup>8</sup> Moreover, the Merged Company will be highly leveraged and subject to enormous pressure to both lower costs and increase revenues. The most logical means of achieving both of those objectives is to reduce expenses and investment in operations, including wholesale operations. Doing so would allow the Merged Company to reduce costs while creating an unfair competitive advantage in the marketplace. But while the Merged Company may benefit, consumers and businesses would not as they would receive inferior service and would be deprived of competitive choice, leading to higher prices, less innovation and lower quality of service.

These facts alone raise serious concerns about the proposed transaction, but the situation is in fact even more threatening to competition and consumer welfare. To begin with, the increased size of the Merged Company’s network footprint will give it a greater incentive to deny, delay and degrade inputs needed by competitors. Those wholesale inputs are increasingly of the kind that have not yet been sufficiently defined (e.g., largely undeveloped collocation arrangements at remote terminals and wholesale finished Ethernet services). As a result, the Merged Company will have an unusually significant opportunity to deny access to such inputs by claiming, for example, that it is not feasible to comply with competitors’ requests for service. At

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<sup>6</sup> 47 U.S.C. §§ 271, 272.

<sup>7</sup> *Id.* § 271(c)(2)(B).

<sup>8</sup> *Id.* § 272(e).



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the same time that the Merged Company's incentives and opportunities to engage in anticompetitive behavior will increase, the merger of the only two significant mid-sized incumbent LECs of their kind will deprive state and federal regulators of the ability to benchmark one company's conduct against the other. This will make it significantly harder for regulators to detect and remedy unlawful conduct.

Degradation of wholesale service has far-reaching implications. The Joint Commenters all rely on wholesale inputs, most importantly loop and transport facilities, in the Qwest territory and, in the case of tw telecom and Socket Telecom, the CenturyLink territory, to serve thousands of primarily small and medium-sized business customers. The Joint Commenters' services deliver lower costs and increased efficiencies for businesses. They do this by, for example, making it possible to perform computing and storage functions in the "cloud" rather than on costly hardware that a business customer would need to buy and maintain. Lower costs and increased efficiencies enable small and medium-sized businesses to focus on investment and job creation, something the American economy desperately needs. But if the Joint Commenters are unable to obtain access to wholesale inputs from the Merged Company on reasonable terms and conditions, they will not be able to compete on an equal footing with the Merged Company. As a result, business customers will almost certainly experience higher costs and receive less efficient service, thereby diminishing their ability to invest, expand and create jobs. The stakes could hardly be higher.

The instant Application does nothing to alleviate these concerns. The Applicants offer few, if any, details on how the proposed transaction can be consummated without running afoul of the market-opening provisions of the Act, let alone any specifics on how the transaction will yield public interest benefits. Testimony and discovery responses provided by the Applicants in

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the relevant state commission proceedings also present little information regarding how the Merged Company would fulfill its wholesale obligations. In fact, CenturyLink has confirmed in discovery responses that it has no intention of deciding or disclosing its plans until after the proposed transaction is completed.<sup>9</sup> For example, CenturyLink has refused to provide any details about its future plans with regard to such critical issues as operations support systems (“OSS”), systems integration, operations integration (e.g., location of personnel and management organization), availability of and rates for wholesale services, wholesale customer service, and network investment.<sup>10</sup> In the relevant state commission review proceedings, the Applicants have also failed to provide any details regarding purported public interest benefits such as broadband and IPTV deployment.<sup>11</sup> At the same time, CenturyLink has made it clear that it will make substantial changes at some point in the future.<sup>12</sup> This is unsurprising. As discussed *infra*, the Applicants have stated that the proposed transaction will result in approximately \$575 million in synergies within three to five years following closing. Those promised operating synergies will almost certainly result from, among other things, changes to the Merged Company’s wholesale operations. CenturyLink’s refusal to describe the nature of such changes—a posture which creates huge uncertainties for consumers and competitors—forecloses any conclusion that the

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<sup>9</sup> See generally “Excerpts From The Applicants’ Responses To Data Requests In The Relevant State Commission Review Proceedings” (attached hereto as “Attachment A”).

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See, e.g., Direct Testimony of Michael Hunsucker On Behalf Of CenturyLink, Inc., Oregon PUC Dkt. UM-1484, at 8 (filed June 22, 2010) (explaining that with respect to Qwest’s and CenturyLink’s OSS, “changes could be expected over time”) (“Hunsucker Oregon PUC Direct Testimony”); see also Attachment A.

Applicants have met their burden of demonstrating that the proposed transaction serves the public interest.

Accordingly, the Commission cannot approve the proposed transaction without imposing a robust set of conditions designed to ensure that the Merged Company's wholesale processes support vibrant competition for all types of customers throughout the Merged Company's territory. As the Commission recently held when it imposed conditions on the merging parties in the *Frontier-Verizon Merger Order*:

Ensuring robust competition not only for American households but also for American businesses requires particular attention to the role of wholesale communications markets, through which providers of broadband and other services secure critical inputs from one another. Well-functioning wholesale markets can help foster retail competition, as it is not economically or practically feasible for competitors to build facilities in all geographic areas. We therefore take seriously allegations that wholesale-related harms will result if the proposed transaction is approved.<sup>13</sup>

The Commission must do the same here.

## **II. THE PROPOSED TRANSACTION POSES A SERIOUS THREAT TO COMPETITION AND CONSUMER WELFARE.**

The proposed transaction will likely result in substantial harm to the public interest for a number of reasons. *First*, given that CenturyLink has never been required to comply with the rigorous review process applicable to Qwest when it sought to enter the long distance market under Section 271, it is unlikely that the Merged Company will be able to provide competitors with wholesale inputs in compliance with Section 271, including the duty to provide nondiscriminatory access to OSS. *Second*, as a non-BOC, the Merged Company will likely be unable to provide special access services on a nondiscriminatory basis under Section 272(e). *tw* telecom's experience with CenturyLink also raises unanswered questions about whether (1) the

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<sup>13</sup> *Frontier-Verizon Merger Order* ¶ 27.

Merged Company's wholesale service performance for special access will deteriorate; (2) the Merged Company will increase rates for special access; and (3) the Merged Company will continue offering Qwest's special access services. *Third*, in light of the Merged Company's increased debt load, commitment to pay substantial dividends, and significant integration costs, it will have a powerful incentive to attempt to achieve "synergies" by reducing wholesale service quality. *Fourth*, the increase in the Merged Company's network footprint will further increase its incentive to discriminate against competitors. *Fifth*, the loss of Qwest as a firm against which to benchmark CenturyLink's conduct, and vice versa, will diminish regulators' ability to enforce the statutory and regulatory requirements governing the Merged Company's provision of wholesale inputs under Section 251<sup>14</sup> and special access.

**A. There Is A Substantial Risk That The Merged Company Will Be Unable To Provision UNEs And Other Wholesale Inputs In Compliance With Section 271 Of The Act.**

There is a substantial risk that the Merged Company will be unable to comply with the requirements applicable to BOCs under Section 271 of the Act. To begin with, it is unlikely that the Merged Company will be able to provide competitors with nondiscriminatory access to OSS because, among other things, (1) as a non-BOC, CenturyLink has no experience in providing such access; (2) even with the adoption of the Embarq wholesale OSS, CenturyLink's OSS capabilities, while an improvement over legacy CenturyTel's capabilities, will be more limited than those of Qwest; and (3) CenturyLink has no experience in servicing the wholesale demand experienced by Qwest. In addition, there is a material risk that the Merged Company will be unable to integrate Qwest's OSS given that (1) the Applicants have provided no information on their OSS integration plans; (2) previous incumbent LEC OSS integrations have resulted in

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<sup>14</sup> 47 U.S.C. § 251.

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substantial harm to competition and consumers; and (3) CenturyLink's attempts to integrate Embark's OSS are still ongoing.

There is also a substantial risk that wholesale service quality will decline post-transaction because, as a non-BOC, CenturyLink has no experience in establishing a process for managing and communicating changes to its OSS (i.e., a change management process or "CMP") or in adhering to rigorous wholesale service performance measurement (i.e., Performance Indicator Definition or "PID") reporting and self-executing penalty regimes (i.e., Performance Assurance Plans or "PAPs"). Additionally, as a non-BOC, CenturyLink's interconnection agreements are not based on the terms developed during extensive state and federal Section 271 review proceedings (e.g., proceedings concerning Statements of Generally Available Terms or "SGATs"). Moreover, there is an increased likelihood that the Merged Company will not comply with the terms of applicable interconnection agreements because, as discussed further below, the Merged Company will have a greater incentive to engage in anticompetitive conduct and regulators will have a diminished ability to detect such conduct.

*1. As A BOC, Qwest Has Been Subject To The Rigorous Section 271 Review Process.*

As a BOC, Qwest, its systems, and its processes have undergone extensive review, over the course of several years, by multiple third-party experts, state regulators, the Department of Justice, the FCC, and competitors, as part of proceedings regarding Qwest's compliance with Section 271 of the Act. These proceedings addressed, among other things, (1) Qwest's OSS;<sup>15</sup>

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<sup>15</sup> The Commission defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3) provisioning, (4) maintenance and repair, and (5) billing. *See In re Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, Memorandum Opinion and Order, 17 FCC Rcd. 26303, Appendix K, ¶ 33 (2002) ("*Qwest Nine-State Section 271 Order*"). OSS include manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those

(2) Qwest's management of changes to its systems and processes; (3) Qwest's wholesale service performance measurement and assurance; and (4) Qwest's service offerings and terms.

*First*, in order to ensure Qwest's compliance with "item 2" (nondiscriminatory access to unbundled network elements) in the competitive checklist contained in Section 271,<sup>16</sup> state commissions required extensive testing of Qwest's OSS. In particular, in 1999, the Regional Oversight Committee ("ROC"), which included participants from 13 of the 14 state commissions (excluding Arizona)<sup>17</sup> from Qwest's incumbent LEC territory, "initiated a collaborative process to design and execute a third-party OSS test to ensure that Qwest's wholesale support systems would be available to competitive LECs in an open and nondiscriminatory manner."<sup>18</sup> The ROC process lasted more than three years,<sup>19</sup> during which time countless conference calls and workshops were held, third-party evaluations, audits, and tests were conducted, and testimony was submitted. All of this information was then addressed in multiple hearings by numerous state commissions and was taken into consideration by the FCC.

Of particular note in the ROC process is the OSS testing conducted by KPMG Consulting ("KPMG") in conjunction with Hewlett Packard ("HP"). In July 2000, the ROC selected KPMG

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systems. *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and CMRS Providers*, First Report and Order, 11 FCC Rcd. 15499, ¶¶ 517-18 (1996).

<sup>16</sup> *See* 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>17</sup> The Arizona Corporation Commission did not participate in the 13-state ROC, but instead conducted its own OSS test using Cap Gemini Ernst & Young as the OSS third-party tester. *See, e.g.,* Evaluation of the Arizona Corporation Commission, WC Dkt. No. 03-194, at 3 (filed Sept. 24, 2003) ("ACC Evaluation").

<sup>18</sup> *Qwest Nine-State Section 271 Order* ¶ 9.

<sup>19</sup> The Regional Oversight Committee process was initiated in mid-to-late 1999, and the FCC issued its first order addressing Qwest's Section 271 applications in December 2002. *See generally Qwest Nine-State Section 271 Order.*

as the administrator of OSS testing for the Qwest region.<sup>20</sup> KPMG, with assistance from the ROC's Technical Advisory Group (which included representatives of Qwest, CLECs, state commission staffs and industry representatives), designed a Master Test Plan to "evaluate the operational readiness, performance and capability of Qwest to provide pre-ordering, ordering, provisioning, maintenance and repair and billing [OSS] documentation, interfaces, and functionality to . . . CLECs."<sup>21</sup> The ROC also retained HP as the "pseudo-CLEC" for the testing process.<sup>22</sup> As a pseudo-CLEC, HP's role was to replicate the conduct of a CLEC interfacing with Qwest's OSS systems to determine if Qwest's OSS was operationally ready to handle the types of orders and transactions CLECs would actually submit in a commercial environment, and to ensure that Qwest's OSS provided the information and tools necessary for a CLEC to interface with Qwest.<sup>23</sup>

KPMG subjected Qwest's OSS to two types of testing: (1) a "transaction" test that tested real-world conditions of the pseudo-CLEC (i.e., HP) during which the pseudo-CLEC submitted the types of pre-order, order and repair transactions that a real CLEC would submit (i.e., what

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<sup>20</sup> See *Qwest Nine-State Section 271 Order* ¶ 10.

<sup>21</sup> *In re Investigation Into US West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, 39<sup>th</sup> Supplemental Order, Washington UTC Dkt. No. UT-003022/UT-003040, ¶ 109 (filed July 1, 2002) ("*Washington UTC 39th Supplemental Order*"). The Master Test Plan required KPMG to test Qwest's OSS in relation to four "domains" (or business functions): (i) Pre-order, Order, and Provisioning (POP), (ii) Maintenance and Repair (M&R), (iii) Billing, and (iv) Relationship Management and Infrastructure. See *id.* ¶ 110. The Master Test Plan identified tests by domain and explained the objective for each test and criteria for passing each test. *Id.*

<sup>22</sup> *Qwest Nine-State Section 271 Order* ¶ 10.

<sup>23</sup> For example, HP established electronic bonding with Qwest, translated back and forth between business rule and electronic interface rule formats, created and tracked orders, resolved problems with missing orders and responses, and submitted trouble tickets. See KPMG Consulting, Qwest Communications OSS Evaluation, Draft Final Report, Evaluation Overview, at 10 (Apr. 26, 2002) ("KPMG Report").

KPMG referred to as “to live the CLEC experience”<sup>24</sup>); and (2) an operational analysis test that examined the form, structure, and content of Qwest’s business practices, including Qwest’s day-to-day operations, management practices and operating procedures in relation to regulatory requirements, and “best practices.”<sup>25</sup> The OSS testing was designed as “military-style” testing, or a “test until pass” approach, whereby KPMG tested and re-tested until Qwest either satisfied the test or it was determined that further testing or action by Qwest would not be beneficial.<sup>26</sup> KPMG’s testing was also designed to address commercial volumes of transactions.<sup>27</sup>

During the transaction testing, third-party vendors submitted more than 21,000 pre-order transactions, more than 600 pre-order test cases,<sup>28</sup> 4,058 Interconnect Mediated Access (“IMA”)-Graphical User Interface (“GUI”) transactions, 17,486 IMA-Electronic Data Interchange transactions,<sup>29</sup> 4,300 initial order test scenarios, and more than 3,500 order retest scenarios.<sup>30</sup> Overall, KPMG and HP executed a total of 32 tests, consisting of 711 evaluation criteria during

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<sup>24</sup> *Id.*

<sup>25</sup> *Washington UTC 39th Supplemental Order* ¶¶ 111-113; *see also* KPMG Report at 11.

<sup>26</sup> *Washington UTC 39th Supplemental Order* ¶ 114; *see also* KPMG Report at 11.

<sup>27</sup> KPMG used projected transaction volumes simulating peak (150% of normal) and stress (250% of normal) transaction volume conditions. *See Qwest Nine-State Section 271 Order* ¶ 108.

<sup>28</sup> *In re Investigation Into US West Communications, Inc.’s Compliance with Section 271 of the Telecommunications Act of 1996*, Qwest Corp.’s Verified Comments Regarding the ROC Final OSS Test Report, Washington UTC Dkt. No. UT-003022/UT-003040, at 26 (filed June 3, 2002) (“Qwest Washington Comments”).

<sup>29</sup> *Id.* at 27.

<sup>30</sup> *Id.* at 33. During the transaction testing in the Arizona OSS test, more than 10,000 pre-order transactions were executed, more than 1,700 ordering and provisioning transactions were executed, and more than 80 maintenance and repair transactions were executed. *See* Cap Gemini Ernst & Young, Final Report of the Qwest OSS Test (prepared for Arizona Corporation Commission) at 15 (May 3, 2002).



the ROC OSS test.<sup>31</sup> There were 256 “Exceptions” and 242 “Observations” (i.e., issues of concern) identified by KPMG and HP during the testing, which through improvements to systems and retesting were reduced to 14 Exceptions and one Observation.<sup>32</sup> In other words, as a result of the testing, hundreds of issues of concern regarding Qwest’s OSS were identified and resolved through OSS improvements and re-testing.

For example, HP determined that Qwest was failing to properly process manually handled orders—a problem that the Idaho Public Utilities Commission described as “an unacceptably high level of human errors in the manual processing of orders.”<sup>33</sup> To address this problem, HP logged Exceptions and Observations to Qwest’s performance related to manually handled orders. Qwest then investigated the causes of the Exceptions and Observations (which revealed Qwest errors) and made improvements such as system upgrades,<sup>34</sup> “additional training[,] and revised documentation.”<sup>35</sup> After conducting re-testing, KPMG developed, under

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<sup>31</sup> Brief of Qwest Communications International, Inc. in Support of Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota, WC Dkt. No. 02-148, at 112 (filed June 13, 2002).

<sup>32</sup> See *Qwest Nine-State 271 Order* ¶ 12; see also *Washington UTC 39th Supplemental Order* ¶ 115. For the OSS testing conducted in Arizona, Cap Gemini Ernst & Young documented and addressed 399 issues identified during testing. See *In re Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, WC Dkt. No. 03-194, Memorandum Opinion and Order, 18 FCC Rcd. 25504, ¶ 17 (2003).

<sup>33</sup> Written Consultation of the Idaho PUC, WC Dkt. No. 02-148, at 6 (filed June 11, 2002) (“Idaho PUC Consultation”).

<sup>34</sup> See, e.g., Qwest Washington Comments at 40 (“Qwest will implement an IMA 10.1 enhancement . . . substantially reducing manual processing errors in this area.”).

<sup>35</sup> Idaho PUC Consultation at 6; see also Qwest Washington Comments at 40.

the direction of the ROC, modified Qwest performance measurements to ensure adequate performance for manually handled orders.<sup>36</sup>

*Second*, during the Section 271 review process, state commissions required Qwest to redesign its CMP.<sup>37</sup> According to the Arizona Corporation Commission, “Qwest’s initial Change Management Process was found to have numerous deficiencies and was adjudged to be inadequate.”<sup>38</sup> Through collaboration with the staffs of state commissions, CLECs, and third-party vendors, Qwest overhauled its CMP in order to bring it in compliance with the FCC’s five requirements<sup>39</sup> for an adequate CMP under Section 271.<sup>40</sup> As part of this overhaul, Qwest’s

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<sup>36</sup> See generally KPMG Consulting, Qwest Manual Order Entry Performance Indicator Description Adequacy Study (June 11, 2002).

<sup>37</sup> See, e.g., ACC Evaluation at 3 (“At the request of the [Arizona Corporation Commission] Staff and its consultants, Qwest also implemented a comprehensive redesign of its Change Management Process (‘CMP’).”).

<sup>38</sup> *Id.* at 12.

<sup>39</sup> See *Qwest Nine-State Section 271 Order*, Appendix K, ¶ 42 (“In making this determination, [the Commission] assesses whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.”).

<sup>40</sup> See, e.g., Evaluation of the Colorado Public Utilities Commission, WC Dkt. No. 02-148, at 4 (filed July 2, 2002) (“Colorado PUC Evaluation”) (“Qwest’s change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC’s change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance.”); see also *id.* at 45 (“Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff began meeting in a collaborative effort to redesign Qwest’s change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest’s CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest’s contention that ‘it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.’”).

redesigned CMP was subject to evaluation and testing by third-party vendors.<sup>41</sup> The redesigned CMP is memorialized in the “Qwest Wholesale Change Management Process Document,” which is available on Qwest’s website.<sup>42</sup>

*Third*, the Section 271 review process resulted in the development of wholesale service performance measurements (i.e., PIDs)<sup>43</sup> and self-executing remedy plans, (i.e., PAPs), designed to ensure that Qwest continues to comply with the Section 271 competitive checklist. The PIDs were collaboratively developed for use in the third-party testing of Qwest’s OSS.<sup>44</sup> During an independent audit conducted pursuant to the ROC’s Master Test Plan, Liberty Consulting found

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<sup>41</sup> See, e.g., *id.* at 45-46 (“With regard to CMP, the ROC OSS test [by KPMG] examined the adequacy and completeness of procedures for developing, publicizing, evaluating, and implementing changes to Qwest’s wholesale OSS interfaces and business processes. The test also focused on the tracking mechanisms of proposed changes and adherence to established change management intervals.”) (internal citation omitted); see also ACC Evaluation at 12 (“[Cap Gemini Ernest and Young] also undertook an evaluation of Qwest’s Change Management Process, a review deemed necessary by the FCC in prior 271 Orders.”).

<sup>42</sup> See Qwest Wholesale Change Management Process Document, *available at* <http://www.qwest.com/wholesale/cmp/index.html>.

<sup>43</sup> See, e.g., Qwest Oregon SGAT Nineteenth Revised Exhibit B (June 26, 2007) (listing 69 total PIDs), *available at* <http://www.qwest.com/wholesale/clecs/nta.html>.

<sup>44</sup> See, e.g., *Washington UTC 39th Supplemental Order* ¶ 29 (“The performance measures Qwest uses to report its monthly commercial performance in Washington and other states in its operating territory were collaboratively developed by the Regional Oversight Committee’s (ROC) Technical Advisory Group (TAG) to be used in the third-party testing of Qwest’s Operations Support Systems (OSS).”); ACC Evaluation at 3 (“As part of the collaborative OSS testing process, the parties worked together to develop a comprehensive set of Performance Indicator Definitions (‘PIDs’). These PIDs, with some modification, also formed the basis for the [ROC’s] Performance Measurement Evaluation and OSS testing process.”). Qwest’s PIDs measure performance in three ways: retail parity (for measures with retail analogues), benchmark (for measures without retail analogues) and “parity by design” (for measures without retail analogues or benchmarks). Statistical measures (modified “z-tests”) are used for determining whether Qwest satisfies the parity and benchmark performance measures. See *In re Qwest Corp.’s Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process et al.*, New Mexico Utility Case Nos. 3269 *et al.*, Final Order Regarding Compliance with Outstanding Section 271 Requirements, 2002 N.M. PUC LEXIS 2, ¶ 65 (Oct. 8, 2002).

a number of deficiencies “in Qwest’s measurement and reporting processes and in the PIDs themselves” which, when resolved, resulted in “significant improvements to both the processes used by Qwest and the specificity and clarity of the PID.”<sup>45</sup> For example, the performance measurement reporting problems discovered during the audit demonstrated the need for Qwest to revise its data collection efforts and provide additional user documentation and training.<sup>46</sup> After reviewing Qwest’s efforts to correct these problems, Liberty Consulting concluded that “Qwest’s performance reporting accurately and reliably report[s] Qwest’s actual performance.”<sup>47</sup>

The PAPs applicable to Qwest are also the result of extensive state commission review proceedings.<sup>48</sup> As a result of the ROC Post Entry Performance Plan multi-state collaborative, and at the request of various state commission staffs and CLECs, Qwest made numerous revisions to its original PAP.<sup>49</sup> For example, because the Arizona Corporation Commission “concluded that an efficient and effective PAP was necessary to assure Qwest’s future compliance with [] market opening measures,” it required Qwest to make revisions “that substantially improve[d] the value of the PAP to this Commission in its efforts to ensure” such

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<sup>45</sup> See *Washington UTC 39th Supplemental Order* ¶¶ 33-34 (internal citation omitted).

<sup>46</sup> *Id.* ¶ 39.

<sup>47</sup> *Id.* (internal citation omitted).

<sup>48</sup> See, e.g., Comments of the Nebraska Public Service Commission, WC Dkt. No. 02-148, at 4 (filed July 3, 2002) (“Nebraska PSC Comments”) (describing the 12-state ROC Post Entry Performance Plan collaborative’s extensive conference calls and multi-day workshops to examine and discuss Qwest’s PAP).

<sup>49</sup> See *id.*; see also Idaho PUC Consultation, Exhibit D, at 3-4 (discussing revisions to Qwest’s PAP); ACC Evaluation at 24.

compliance.<sup>50</sup> In addition, Liberty Consulting conducted an independent evaluation of Qwest's PAP as part of a nine-state review proceeding.<sup>51</sup> While the PAPs vary by state, they generally require Qwest to provide CLECs with monthly reports on specific PIDs and to provide CLECs or the state with remedy payments for failure to meet applicable benchmarks.<sup>52</sup>

*Fourth*, during the Section 271 review process, state commissions held numerous collaborative workshops to develop SGAT terms that would comply with the Section 271 competitive checklist.<sup>53</sup> Qwest made substantial revisions to its SGATs to reflect the terms developed during these extensive proceedings.<sup>54</sup> Since then, terms from the SGATs have

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<sup>50</sup> ACC Evaluation at 24.

<sup>51</sup> See Nebraska PSC Comments at 4; see also *Washington UTC 30th Supplemental Order* ¶¶ 10-11.

<sup>52</sup> See, e.g., Qwest Oregon SGAT Nineteenth Revision, Exhibit K, Performance Assurance Plan (June 26, 2007), available at <http://www.qwest.com/wholesale/clecs/nta.html>.

<sup>53</sup> See, e.g., Colorado PUC Evaluation at 26 ("This retelling of bringing Qwest's SGAT into compliance with the 14-point competitive checklist only begins to touch on the volume and breath of issues that arose in Colorado's six SGAT workshops. . . . After evaluating these six staff workshop reports and the enormous record behind these reports, the [Colorado PUC] concluded Qwest's SGAT complies with the 14-point checklist."); see also Idaho PUC Consultation, Exhibit A, at 3 ("The checklist items were addressed in the context of Qwest's SGAT, and so the focus of the workshops was the SGAT terms required to comply with the checklist items. Qwest accordingly has filed the SGAT with the reports showing the terms as they were developed through the workshops and subsequent reports.").

<sup>54</sup> See, e.g., Colorado PUC Evaluation at 2 ("These Track A interconnection agreements are accompanied in this application by the most thorough Statement of Generally Available Terms and Conditions (SGAT) in the country. The SGAT runs some 636 pages, was developed collaboratively by the participants in the § 271 process, and provides CLECs with a concrete and specific legal obligation to provide access to and interconnection with Qwest's network. Furthermore, the SGAT is a crucial part of Qwest's compliance with the 14-point competitive checklist from § 271(c)(2)(B)."); see also ACC Evaluation at 19 ("[T]he ACC directed Qwest to submit an SGAT for consideration and deliberation prior to any approval of its request for Section 271 authority. The ACC deemed it prudent to condition all Checklist approvals on verification that the findings made in the [ACC Staff workshop] reports were incorporated into the SGAT before Commission support for any Section 271 application would be granted. On August 29, 2003, Qwest submitted the Fourteenth Revised version of its SGAT.").

become part of CLEC interconnection agreements with Qwest.<sup>55</sup> CLECs have also used Qwest's SGATs (1) "as a key source to help frame interconnection agreement ('ICA') negotiation positions"; (2) "as a resource for attempting to resolve disputes with Qwest such as in [the] billing, carrier relations, and Change Management Process ('CMP') contexts"; and (3) "as an internal resource" to, among other things, confirm state commission-approved terms and filed requirements."<sup>56</sup>

2. *CenturyLink Lacks Experience As A BOC, Thereby Raising Questions About The Merged Company's Ability To Provision Wholesale Inputs In Compliance With Section 271.*

Unlike Qwest, CenturyLink, its systems, and its processes have not undergone the type of substantial review and third-party testing that was conducted during the Section 271 proceedings described above. This differential in regulatory treatment has left CenturyLink with an enormous deficit in operational experience and capabilities. Qwest received its first Section 271 approval in 2002<sup>57</sup> and has been using Section 271-evaluated systems and processes to process commercial volumes of wholesale orders since that time. CenturyLink's processes during the same time period have been largely manual, and CenturyLink cannot provide evidence of substantial third-party testing or review of its systems and processes, particularly of the nature

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<sup>55</sup> For example, the framework, general numbering scheme, and many sections of the current Qwest-Integra interconnection agreement in Minnesota are substantially similar to Qwest's Minnesota SGAT terms. *Compare* Arbitrated Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services Provided by Qwest Corporation for Eschelon Telecom of Minnesota, Inc. in the State of Minnesota, Minnesota PUC Dkt. No. IC-06-768 (Feb. 6, 2008) with Minnesota SGAT Third Revision, § 12 (Mar. 17, 2003), available at <http://www.qwest.com/about/policy/sgats/SGATSDocs/minnesota/MN+3rd+Revised+SGAT+3-17-03+Clean.pdf>.

<sup>56</sup> Joint CLEC Responses to Staff's First Set of Data Requests, ACC Dkt. No. T-01051B-08-0613, at 2 (Feb. 18, 2009).

<sup>57</sup> See generally *Qwest Nine-State Section 271 Order*.

and extent of the testing and evaluation performed in the Qwest Section 271 proceedings.<sup>58</sup>

CenturyLink also cannot provide evidence that it has a CMP, PIDs and PAPs, or the equivalent of SGAT terms. CenturyLink's lack of experience in this and other areas raises significant questions about the Merged Company's ability to provide wholesale inputs in compliance with Section 271.

a. Operations Support Systems

The Commission has held that nondiscriminatory access to OSS functions under Section 271 is critical for competitors to have a meaningful opportunity to compete:

The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. For example, new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers. *The Commission has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing," in the local exchange market.*<sup>59</sup>

Because CenturyLink's OSS has not been subject to the same rigorous Section 271 OSS development and testing process as Qwest, it is doubtful that the Merged Company will be able to provide nondiscriminatory access to OSS in compliance with Section 271 in the legacy Qwest territory. For instance, the Commission has held that, under Section 271, "providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in

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<sup>58</sup> Indeed, CenturyLink has admitted that it "has not conducted third-party testing of its systems." See CenturyLink's Response to Integra's Information Request No. 2-18, Minnesota PUC Dkt. Nos. P-421, *et al.*/PA-10-456 (July 8, 2010).

<sup>59</sup> *Qwest Nine-State Section 271 Order*, Appendix K, ¶ 25 (emphasis added).

the same manner as the BOC.”<sup>60</sup> Accordingly, Qwest’s IMA system, which “provides pre-ordering and ordering/provisioning functions for all local competitive products that are ordered via Local Service Requests (‘LSRs’),” has “an application-to-application option using Extensible Markup Language (‘XML’)” in addition to a graphical user interface (“GUI”) option.<sup>61</sup> By contrast, it is not clear that CenturyLink offers an application-to-application option for pre-ordering and ordering functions to wholesale customers. Indeed, it appears that CenturyLink’s OSS capabilities are significantly more limited than those of Qwest. For example, according to Qwest, it offers wholesale customers the following electronic options to access its OSS in addition to IMA:

Qwest Online Request Application (“QORA”)

QORA supports ordering for all wholesale products ordered via an Access Service Request (“ASR”). QORA provides CLECs with a GUI interface, or CLECs’ systems can submit ASRs via QORA’s Network Data Mover (“NDM”) and Unified Order Model (“UOM”) gateways.

Customer Electronic Maintenance and Repair (“CEMR”)

CEMR is Qwest’s GUI that provides CLECs with maintenance and repair functions for their existing products and services. CEMR allows CLECs to perform trouble administration activities such as creating and editing trouble reports, monitoring trouble report status and reviewing trouble history.

Mediated Access Electronic Bonding Trouble Administration (“MEDIACC – EBTA”)

MEDIACC EBTA provides CLECs with the ability to perform maintenance and repair functions in their own systems. MEDIACC EBTA is the electronic gateway that CLECs’ systems use to communicate with Qwest’s systems.<sup>62</sup>

It is doubtful that CenturyLink, whose OSS in the legacy CenturyTel territory were largely manual as of June 2009,<sup>63</sup> can provide similar electronic functionalities. The instant Application

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<sup>60</sup> *Id.*, Appendix K, ¶ 34 & n.99.

<sup>61</sup> Direct Testimony of Christopher Viveros, Qwest Communications International, Inc., Oregon PUC Dkt. No. UM 1484, at 8 (filed June 22, 2010) (“Viveros Oregon PUC Direct Testimony”).

<sup>62</sup> *Id.* at 8.



fails to provide any details about the capabilities of the wholesale customer-facing systems and the back-end systems currently used by CenturyLink, let alone those systems that will be used by the Merged Company. Indeed, CenturyLink has made clear in state commission review proceedings of the proposed transaction that it has no intention of making decisions regarding the systems that will be used by the Merged Company until after closing.<sup>64</sup>

CenturyLink also lacks the experience to support Qwest's extensive wholesale operations. After acquiring Qwest, CenturyLink will face increased wholesale demand and will be required to process substantially higher volumes of wholesale orders than it does today. In the Application, CenturyLink has not offered any details as to how it plans to accommodate this significant increase in wholesale demand.

CenturyLink's acquisition of Embarq does not assuage these concerns. Although the Commission required CenturyTel to adopt Embarq's wholesale OSS in the *CenturyTel-Embarq Merger Order*,<sup>65</sup> Embarq's OSS has also never been subject to review under Section 271. In addition, even with the acquisition of Embarq, the volume of CLEC orders processed by CenturyLink is far less than that processed by Qwest. Moreover, as discussed further below, the integration of Embarq is still ongoing.

In sum, CenturyLink's status as a non-BOC means that it has an incredibly long way to go before it can support Qwest's systems. Qwest has stated that OSS is the "life blood" of the

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<sup>63</sup> See *CenturyTel-Embarq Merger Order* ¶¶ 21-26 (discussing some of the problems "resulting from CenturyTel's manual OSS," which "appear to disadvantage competitors in several ways").

<sup>64</sup> See Attachment A, at 1.

<sup>65</sup> See *CenturyTel-Embarq Merger Order* ¶ 29 & Appendix C.

wholesale operations that today make competition possible in the Qwest region.<sup>66</sup> As the Joint Commenters reiterate throughout these Comments, the Commission simply cannot find that the proposed transaction meets the public interest standard unless and until CenturyLink is able to prove that it can and will operate Qwest's OSS in accordance with the requirements of Section 271.

i. Previous Incumbent LEC OSS Integrations Have Resulted In Substantial Harm To Competitors.

Rather than provide a description of the Applicants' plans for integrating their OSS, the Applicants offer only the vague assurances that CenturyLink "has a long history of successful acquisitions,"<sup>67</sup> a "proven [] ability to acquire and successfully integrate other companies,"<sup>68</sup> and a "management team [with] some of the longest and most successful tenure in the industry with a proven track record of successful mergers and acquisitions."<sup>69</sup> In light of wholesale customers' experiences following recent incumbent LEC mergers, however, such bald statements mean nothing.

The damage caused to competition and consumer welfare by recent incumbent LEC mergers has been well documented, so only a brief recitation is necessary here. In 2005 and 2006, the Carlyle Group, led by executives with "a track record of successful

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<sup>66</sup> Surrebuttal Testimony of Renee Albersheim for Qwest Corp., Utah PSC Dkt. No. 07-2263-03, at 39 (filed Aug. 10, 2007).

<sup>67</sup> Application at 8.

<sup>68</sup> *Id.* at 9.

<sup>69</sup> *Id.* at 10.